

REMARKS

Entry of this Amendment is proper because it narrows the issues on appeal and does not require further searching by the Examiner.

Claims 1-13 and 21-26 and 29-30 are all the claims presently pending in the application. Claims 1, 29 and 30 have been amended. Claim 30 has been withdrawn.

It is noted that the claim amendments are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims or for any statutory requirements of patentability. Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 1-13, 21-26 and 28-29 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Swartzel et al. (U. S. Pat. No. 6,552,663) in view of Marvin (U. S. Patent No. 5,575,100) and further in view of Johnson (U.S. Pat. No. 6,624,757).

This rejection is respectfully traversed in view of the following discussion.

I. THE CLAIMED INVENTION

An exemplary aspect of the claimed invention (e.g., as defined by claim 1) is directed to a system for restocking and repricing merchandise, including a shelf label including information printed thereon for identifying a section of a shelf, and a shelf label holder which holds the shelf label and includes an illuminating device including a plurality of illuminating sections.

Importantly, the invention also includes a hand-held unit which remotely causes the illuminating device to illuminate a section of the plurality of illuminating sections which corresponds to the section of the shelf under a predetermined condition, the predetermined condition including the shelf label holder detecting a wireless signal identifying the section of the shelf (Application at Figure 2; paragraphs [0032], [0037]).

This feature may help guide a store clerk to a correct store location for restocking and/or repricing merchandise (Application at page 2, lines 13-16).

II. THE ALLEGED PRIOR ART REFERENCES

The Examiner alleges that Swartzel would have been combined with Marvin and

Johnson to form the invention of claims 1-13, 21-26 and 28-29. Applicant would submit, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention.

In particular, Applicant respectfully submits that these alleged references are unrelated. Indeed, no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight.

In fact, Applicant submits that the references provide no motivation or suggestion to urge the combination as alleged by the Examiner. Indeed, these references clearly do not teach or suggest their combination. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so motivated to combine the references as alleged by the Examiner. Therefore, the Examiner has failed to make a prima facie case of obviousness.

Moreover, neither Swartzel, nor Marvin, nor Johnson, nor any alleged combination thereof teaches or suggests "*a hand-held unit which remotely causes said illuminating device to illuminate a section of said plurality of illuminating sections which corresponds to said section of said shelf under a predetermined condition, wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf*", as recited, for example, in claim 1 (Application at Figure 2; paragraphs [0032], [0037]). As noted above, this feature may help guide a store clerk to a correct store location for restocking and/or repricing merchandise (Application at page 2, lines 13-16).

Clearly, these features are not taught or suggested by the cited references.

First, Applicant respectfully submits that the Examiner's allegations with respect to Swartzel are unclear. In particular, it is unclear whether the Examiner is alleging that Swartzel teaches the shelf label and shelf label holder of the claimed invention. Indeed, on page 3, the Examiner indicates that these features are disclosed in Swartzel at col. 3, lines 16-36, and at col. 3, lines 16-22, respectively. But on page 4, the Examiner concedes that Swartzel does not teach or suggest these features.

Further, assuming that the Examiner is alleging that Swartzel teaches these features, it is unclear what features in Swartzel the Examiner is attempting to equate with the shelf label and the shelf label holder of the claimed invention. Indeed, with respect to the "shelf label",

the Examiner states on page 3 of the Office Action that "a front rail of a shelf has a plurality of display tags". Thus, presumably the Examiner is attempting to equate the "front rail of a shelf" with the shelf label of the claimed invention. However, Applicant notes that the "front rail of a shelf" in Swartzel is held by the shelf not by a "shelf label holder". Therefore, the Examiner's allegations are completely unreasonable.

Further, assuming that the Examiner is attempting to equate the display tags 20 with the "shelf label" of the claimed invention, Applicant notes that Swartzel teaches that the display tags 20 are "disposed along the front rails 22 of the store's multiple display shelves 24" (Swartzel at col. 3, lines 19-21). That is, nowhere does Swartzel teach or suggest that the display tags 20 are "held" by anything. Further, even assuming (arguendo) that the tags 20 are "held" by the front rails 22 of the shelves 24, it is completely unreasonable to equate the front rails 22 with the "shelf label holder" of the claimed invention which includes an illuminating device including a plurality of illuminating sections.

Further, with respect to the "shelf label holder" on page 3 of the Office Action, the Examiner attempts to equate the display tag 20 with the shelf label holder. However, this contradicts the Examiner's earlier allegations that the display tag 20 was equivalent to the shelf label. Applicant respectfully submits that it is completely unreasonable for the Examiner to equate the display tag 20 with both the "shelf label" and the "shelf label holder". Moreover, nowhere does Swartzel teach or suggest that the tags 20 "hold" anything, let alone a shelf label.

Further, the Examiner attempts to equate the "hand held RF unit 51" in Swartzel with the hand held unit of the claimed invention. This is completely unreasonable.

In fact, Swartzel teaches the unit 51 is in communication only with the TSC 28. Further, Swartzel teaches simply that the display of the tag 20 "may change to a flashing 'here' ... when a product's UPC is scanned by a hand held RF unit 51" (Swartzel at col. 9, lines 9-11). That is, the Examiner's position relies on the tag 20 being equated with a "shelf label holder", which is clearly unreasonable, as set forth above.

Therefore, nowhere does Swartzel teach or suggest that the RF unit 51 remotely causes the illuminating device to illuminate a section of the plurality of illuminating sections which corresponds to the section of the shelf under a predetermined condition, the predetermined condition including the shelf label holder detecting a wireless signal

identifying the section of the shelf. Therefore, it is completely unreasonable for the Examiner to equate the RF unit 51 with the hand held unit of the claimed invention.

Further, nowhere are these features taught or suggested by Marvin. Indeed, the Examiner attempts to equate the display tag 34 in Marvin with the shelf label of the claimed invention.

However, Marvin teaches that the display tag 34 is "side-mounted" presumably on a side of the electronic display module 32. Further, Marvin teaches that "the use of two holders 64 and 66 allows display tag 34 to be retained against the inner surface of primary cover member 58 by front side 44 of electronic display module" (Marvin at col. 3, lines 30-32).

However, even assuming (arguendo) that the tag 34 may be equated with a "shelf label", nowhere does Marvin teach or suggest that the holders 64, 66 an illuminating device including a plurality of illuminating sections. Therefore, Marvin certainly does not teach or suggest a hand-held unit which remotely causes the illuminating device to illuminate a section of the plurality of illuminating sections which corresponds to the section of the shelf under a predetermined condition, the predetermined condition including the shelf label holder detecting a wireless signal identifying the section of the shelf, as in the claimed invention.

Further, Johnson does not teach or suggest these features. In fact, Johnson simply discloses a shelf pricing display apparatus which includes an electronic display strip 4, a computing means for assigning the display strip 4 a unique strip address code, and a communication means for transmitting information from the computing means to the display strip 4 (Johnson at col. 4, lines 20-44).

The Examiner attempts to equate the display strip 4 with the shelf label holder of the claimed invention. This is clearly unreasonable.

In particular, Johnson simply teaches that the display strip 4 "can be an LCD, an a (sic) LED, a plasma display or other similar electronic display device". That is, nowhere does Johnson teach or suggest that that display strip 4 "holds" anything, let alone a shelf label. Therefore, it is completely unreasonable for the Examiner to equate the display strip 4 with the shelf label holder of the claimed invention.

Moreover, Johnson does not even mention a hand held unit. Therefore, like Swartzel and Marvin, Johnson clearly does not teach or suggest a hand-held unit which remotely

causes the illuminating device to illuminate a section of the plurality of illuminating sections which corresponds to the section of the shelf under a predetermined condition, the predetermined condition including the shelf label holder detecting a wireless signal identifying the section of the shelf, as in the claimed invention.

Therefore, neither Marvin nor Johnson make up for the deficiencies of Swartzel.

Therefore, Applicant would submit that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention. Therefore, the Examiner is respectfully requested to withdraw this rejection.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-13, 21-26 and 28-29, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,



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